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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KATHLEEN TRAMMELL, an) Case No: 2:14-cv-01364-JAD-PAL
individual,)
Plaintiff,)
vs.)
MEDCURE, INC., a Nevada foreign)
corporation,)
Defendant.)
)

**JOINT APPLICATION FOR LEAV
PURSUANT TO L.R. 10-5 TO FILE
CONFIDENTIAL SETTLEMENT
AGREEMENT UNDER SEAL FOR
IN CAMERA INSPECTION AND
APPROVAL; AND [PROPOSED]
ORDER THEREON**

Plaintiff Kathleen Trammell (“Trammell”), by and through her counsel, Mark R. Thierman and Joshua D. Buck of Thierman Law Firm, P.C., and Defendant MedCure, Inc. (“MedCure”), by and through its counsel, Laura J. Thalacker and Doreen Spears Hartwell of Hartwell Thalacker, Ltd., hereby submit this Joint Application for Leave Pursuant to L.R. 10-5 to File Confidential Settlement Agreement Under Seal for *In Camera* Inspection and Approval (the “Application); and [Proposed] Order Thereon. Through this Application, the Parties are requesting that this Court: 1) enter an Order permitting the parties to file their Confidential Settlement Agreement under seal pursuant to L.R. 10-5; and 2) enter an Order approving the terms of their settlement as a fair and reasonable resolution of a bona fide wage dispute under the

1 Fair Labor Standards Act (“FLSA), 29 USC §§ 201, et seq. and Nevada law.

2 The Parties state the following in support of this Application:

3 1. Trammell filed a Complaint for damage in the above-captioned matter, which is
 4 currently pending in the United States District Court for the District of Nevada (the “Case”)
 5 in which Trammell alleges that her former employer, MedCure, violated the FLSA and Nevada
 6 wage and hour laws (specifically, NRS § 608.016 and § 608.018) by improperly classifying her
 7 as “exempt” and failing to timely pay her overtime wages. In addition, Trammell alleges
 8 MedCure breached a contract of employment. Trammell’s Case seeks back wages, liquidated
 9 damages, penalties, pre-judgment and post-judgment interest, other damages, and attorney’s fees
 10 and costs.

11 2. MedCure genuinely denies fault, liability or wrongdoing of any kind
 12 associated with the claims asserted in the Case. MedCure contends that Trammell, who was
 13 paid on a salary basis, was properly classified based on her job duties as an exempt
 14 Administrative and/or Outside Sales employee and, therefore, was not eligible to receive
 15 overtime payments. MedCure further maintains that it has complied at all times with the FLSA
 16 and all applicable Nevada wage and hour laws and that Trammell is not entitled to any of the
 17 back wages, liquidated damages, penalties or other amounts claimed in the Case. In addition,
 18 MedCure maintains that there was no employment contract between the parties or any breach of
 19 such an alleged contract.

20 3. The Parties, through their counsel, have been involved in extensive settlement
 21 negotiations, including exchanging evidence (primarily, time records and wage history records).
 22 The Parties have discussed the Case in depth and, to facilitate settlement, have further
 23 voluntarily exchanged detailed analysis of the facts and legal issues related to the Parties’
 24 respective claims and defenses. The Parties have also exchanged their respective calculation of

1 potential damages. Based upon the time records exchanged between the parties, according to
 2 the calculations of Ms. Trammell's counsel, if Ms. Trammell were to prevail in her claim for
 3 overtime (which MedCure disputes), the maximum amount of back wages available to her
 4 (exclusive of liquidated damages and penalties) would total \$9,534.75. Based on the Parties'
 5 discussions, analysis and exchange of information, the Parties stipulate and represent that there
 6 is a bona fide dispute between the Parties regarding the merits of Trammell's Case and the back
 7 wages, damages and other amounts claimed therein.

9 4. Based on the facts and arguments discussed and presented between the Parties,
 10 Trammell and MedCure have agreed to resolve the Case in its entirety on terms which they
 11 mutually stipulate and agree are fair, reasonable and adequate. The Parties have entered into
 12 and executed a confidential settlement agreement (the "Confidential Settlement Agreement"),
 13 which enables the Parties to avoid the inherent uncertainty, risk, expense, and inconvenience of
 14 protracted litigation. The Confidential Settlement Agreement further will result in Trammell
 15 receiving a substantial payment immediately, instead of waiting for a possible payment at an
 16 unknown future date. The Confidential Settlement further allows the Parties to put this Case and
 17 all issues related to Trammell's employment behind them so that they can eliminate the
 18 distractions of litigation and focus on other matters.

20 5. The Parties are entering into the Confidential Settlement Agreement with the
 21 intention of permanently resolving any and all claims asserted, or which could have been
 22 asserted, in the Case and/or that are reasonably related to the Case or Trammell's employment,
 23 and termination of employment, with MedCure.

25 6. Trammell's counsel is experienced in wage and hour litigation and is fully
 26 satisfied that the resolution and the terms and conditions of the Confidential Settlement
 27 Agreement are fair, reasonable, and adequate and that the agreed-upon resolution of the Case

1 and the Settlement Agreement are in Trammell's best interests.

2 7. The Parties, pursuant to L.R. 10-5, shall contemporaneous with the filing of this
3 Application, submit a copy of the Confidential Settlement Agreement to Chambers for the
4 Court's review and consideration.

5 8. The terms and conditions of the Confidential Settlement Agreement expressly,
6 and with only very narrow and limited exceptions, prohibit any disclosure of the Agreement's
7 terms.

9 9. The confidentiality provisions of the Confidential Settlement Agreement are a
10 material and essential terms of the settlement, which was specifically negotiated and agreed to by
11 both Parties.

12 10. The Parties request that the Settlement Agreement be filed under seal for
13 *in camera* review and approval by the Court for the following reasons:

14 a. Confidentiality of the Agreement was and is a material term for both
15 parties and, absent such confidentiality, one of the important incentives for resolving the
16 litigation would be eliminated.

17 b. Trammell desires to keep the terms and conditions of the Settlement
18 Agreement confidential, including the amount she is settling for, to preserve her financial
19 privacy and to prevent third parties (including potential future employers) from accessing
20 information related to her personal financial and business affairs.

21 c. MedCure desires to keep the terms and conditions of the Settlement
22 Agreement confidential as it has steadfastly denied liability in this Case and is concerned that
23 disclosing the terms of the Settlement Agreement will provide an incentive for third parties to
24 bring, what MedCure views as, non-meritorious claims against the company. MedCure further
25 desires to keep the terms and conditions of the Settlement Agreement confidential as public
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1 disclosure may impact its settlement and/or litigation positions in future legal claims against the
 2 company.

3 11. Parties to a wage and hour lawsuit in which an employee is seeking back wages
 4 under 29 U.S.C. § 216(b), may seek the Court's approval for resolution of the litigation. *See,*
 5 *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350 (11th Cir. 1982). Trammell and
 6 MedCure hereby jointly represent, stipulate and agree that the settlement reached between them
 7 is fair, reasonable and equitable resolution of Trammell's claims, is in compliance with the
 8 policies of the FLSA, and advances judicial economy.

9 12. There is a strong public policy interest in encouraging resolution of litigation.
 10 The Settlement Agreement's confidentiality provision was a material and essential term and
 11 condition of the Parties' agreement to resolve this matter. Therefore, Trammell and MedCure
 12 hereby jointly move this Court for an Order approving the Confidential Settlement Agreement
 13 based on *in camera* review by the Court because the public filing of the Confidential Settlement
 14 Agreement would result in the destruction of the confidentiality for which the parties bargained
 15 in good faith. *See Phillips ex rel Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1212
 16 (9th Cir. 2002) (recognizing that courts have entered orders protecting confidential settlement
 17 agreements); *Kalinausas v. Wong*, 151 F.R.D. 363, 365 (D. Nev. 1993) (prohibiting disclosure in
 18 a deposition of "substantive terms" of a confidential settlement agreement and stating,
 19 "Confidential settlements benefit society and the parties involved by resolving disputes relatively
 20 quickly, with slight judicial intervention, and presumably result in greater satisfaction to the
 21 parties. Sound judicial policy fosters and protects this form of alternative dispute resolution. . . .
 22 The secrecy of a settlement agreement and the contractual rights of the parties thereunder
 23 deserve court protection."); *see also Flynn v. Portland General Electric Corp.*, 1989 WL
 24 112802, *2 (D. Or.) (granting a protective order barring discovery of a settlement agreement and
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1 explaining that “the strong public policy favoring settlement of disputed claims dictates that
2 confidentiality agreements not be lightly abrogated”).

3 13. Upon the Court’s approval of the Confidential Settlement Agreement and
4 MedCure’s compliance with payment obligations for the settlement, the Parties will jointly file a
5 Stipulation and Order for Dismissal of the Case with Prejudice.
6

7 WHEREFORE, the Parties jointly and respectfully request that the Court allow *in*
8 *camera* inspection of the Confidential Settlement Agreement; and

9 WHEREFORE, the Parties jointly and respectfully request that the Court approve the
10 Confidential Settlement Agreement.

11 DATED this 22nd day of December, 2014.

12 HARTWELL THALACKER, LTD.

13 THIERMAN LAW FIRM, P.C.

14 By: /s/ Laura J. Thalacker

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By: /s/ Mark R. Thierman

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19 Attorneys for Defendant MedCure

20 Attorneys for Plaintiff Trammell

21 **ORDER**

22 IT IS SO ORDERED:

23 Dated: January 13, 2015

24 
25 United States Magistrate Judge

1
2 **CERTIFICATE OF SERVICE**
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4 I hereby certify that on the 22nd day of December 2014, I electronically transmitted the
5 attached document to the Clerk's office using the CM/ECF system for filing and transmitted to
6 the following CM/ECF registrants:

7 Mark R. Thierman
8 Joshua D. Buck
9 Thierman Law Firm, P.C.
10 7287 Lakeside Drive
11 Reno, NV 89511
12 Attorney for Plaintiff Kathleen Trammell

13 Jill S. Schwartz
14 David H. Spalter
15 Christopher A. Pace
16 Jill S. Schwartz & Associates, P.A.
17 655 W. Morse Blvd.
18 Suite 212
19 Winter Park, FL 32789
20 Attorney for Plaintiff Kathleen Trammell
21 (Pro Hac Vice Admission Pending)

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/s/ Laura J. Thalacker

[PROPOSED] ORDER

The Joint Application For Leave Pursuant to L.R. 10-5 to File Confidential Settlement Agreement Under Seal For *In Camera* Inspection and Approval; and [Proposed] Order Thereon (“Application”) in Case No: 2:14-cv-01364-JAD-PAL was submitted by Plaintiff Kathleen Trammell and Defendant MedCure, Inc., by and through their counsel of record, before the United States District Court, District of Nevada, the Honorable Jennifer A. Dorsey presiding.

The Court, having read and considered the Parties' Application, and the evidence submitted in support thereof, and having considered the arguments of counsel, and good cause appearing therefore:

The Court finds that the Parties' dispute over Plaintiff Trammell's claims and damages under federal and state law, including the Fair Labor Standards Act, is bona fide and genuine, that the Parties' entered into the Confidential Settlement Agreement in good faith, and that the Confidential Settlement Agreement constitutes a fair and reasonable compromise of Plaintiff Trammell's claims for relief and claimed damages;

IT IS HEREBY ORDERED that the Application is Granted and the Confidential Settlement Agreement is accepted for filing under seal. The Clerk is directed to maintain the Confidential Settlement Agreement under seal, and separate and apart from the public filings in this case, pursuant to Local Rule 10-5.

IT IS FURTHER ORDERED that the Confidential Settlement Agreement filed under seal and duly reviewed and considered by this Court, is approved as to all federal and state claims, including Plaintiff Trammell's wage and hour claims under the FLSA and the Nevada Revised Statutes related to Plaintiff Trammell's claim against MedCure for failure to pay overtime, and penalties, liquidated damages, pre-judgment and post-judgment interest,

1 other damages, attorney's fees and costs, under the terms set forth in the Application signed
2 and submitted by counsel for both Parties filed herewith under seal.

3 IT IS SO ORDERED.
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5 IT IS FURTHER ORDERED that the parties shall have until **January 27, 2015**, in which
to file a stipulation for dismissal.

6 DATED this 13th day of January, 2015.

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8 Peggy A. Leen
9 United States Magistrate Judge
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